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ACTION: Final regulations.

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SUMMARY: This document contains final regulations relating to deductions available upon demolition of a building. These final regulations reflect changes to the law made by the Tax Reform Act of 1984 and affect owners and lessees of real property who demolish buildings.

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DATES: The regulations are effective December 30, 1997.

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FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622-3110 (not a toll-free number). For dates of applicability of these regulations, see § 1.280B-1(c).

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SUPPLEMENTARY INFORMATION:

*Background*

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This document contains final regulations under section 280B of the Internal Revenue Code. Section 280B was added by the Tax Reform Act of 1976, Public Law 94-455, 2124(b), 90 Stat. 1520, 1918 (Oct. 4, 1976), and significant amendments were made to the provision by the Economic Recovery Tax Act of 1981, Public Law 97-34, 212(d)(2)(C) and (e)(2), 95 Stat. 172, 239 (Aug. 13, 1981) (1981 Act) and the Tax Reform Act of 1984, Public Law 98-369, 1063, 98 Stat. 494, 1047 (July 18, 1984) (1984 Act). Transition rules were provided in the Tax Reform Act of 1986, Public Law 99-514, 1878(h), 100 Stat. 2085, 2904 (Oct. 22, 1986) (1986 Act). As originally enacted, section 280B required any costs or losses incurred on account of the demolition of any certified historic structure (a building or structure meeting certain requirements) to be capitalized into the land upon which the demolished structure was located. The 1981 Act modified the definition of certified historic structure for purposes of section 280B from a building or structure meeting certain requirements to a building (or its structural components) meeting certain requirements. The 1984 Act substituted “any structure” for “certified historic structure.”

A notice of proposed rulemaking was published in the **Federal Register** (61 F.R. 31473 [PS-39-93, 1996-2 C.B. 489]) on June 20, 1996. The one written comment received supports the position announced in the notice of proposed rulemaking.

These final regulations define what “structure” means for purposes of section 280B.

*Explanation of Provisions*

These final regulations define the term “structure” for purposes of section 280B as a building and its structural components as those terms are defined in §1.48-1(e) of the Income Tax Regulations. Thus, under section 280B, a structure will include only a building and its structural components and not other inherently permanent structures such as oil and gas storage tanks, blast furnaces, and coke ovens.

The final regulations rely on the legislative history underlying the 1984 and 1986 Acts, which refer repeatedly to buildings rather than to structures generally. In addition, the legislative history of the 1984 Act discusses the difficulty of applying the intent test of §1.165-3 of the regulations, which applies to the demolition of buildings, and indicates that the newly added language is meant to eliminate this difficulty.

*Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

*Drafting Information*

The principal author of these regulations is Bernard P. Harvey, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

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Section 280B.—Demolition of Structures

26 CFR 1.280B-1: Demolition of structures.

T.D. 8745

DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 1

Definition of Structure

AGENCY: Internal Revenue Service (IRS), Treasury.

*Adoption of Amendments to the Regulations*

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 1.280B-1 is added to read as follows:

*§1.280B-1 Demolition of structures.*

(a) *In general.* Section 280B provides that, in the case of the demolition of any structure, no deduction otherwise allowable under chapter 1 of subtitle A shall be allowed to the owner or lessee of such structure for any amount expended for the demolition or any loss sustained on account of the demolition, and that the expenditure or loss shall be treated as properly chargeable to the capital account with respect to the land on which the demolished structure was located.

(b) *Definition of structure.* For purposes of section 280B, the term structure means a building, as defined in §1.48-1(e)(1), including the structural components of that building, as defined in §1.48-1(e)(2).

(c) *Effective date.* This section is effective for demolitions commencing on or after December 30, 1997.

Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

Donald C. Lubick,  
*Acting Assistant Secretary of  
the Treasury.*

(Filed by the Office of the Federal Register on December 29, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 30, 1997, 62 F.R. 67725)